



FEDERAL ELECTION COMMISSION
WASHINGTON D.C. 20461

May 5, 2004

VIA FEDERAL EXPRESS

Thomas A. Federer
Federer & Federer, PC
201 South Fifth Street
St. Charles, MO 63301-2710

RE. MURs 5112 and 5383
Federer for Congress Committee

Dear Mr. Federer:

Based on a complaint filed with the Federal Election Commission on October 11, 2000, and information ascertained in the normal course of carrying out its supervisory responsibilities, the Commission, on August 27, 2003, found that there was reason to believe that your clients, Federer for Congress Committee and Thomas M. Busken, as treasurer, violated 2 U.S.C. §§ 434(b) and 441b(a), and instituted an investigation of this matter.

After considering all the evidence available to the Commission, the Office of the General Counsel is prepared to recommend that the Commission find probable cause to believe that you violated 2 U.S.C. §§ 434(b) and 441b(a).

The Commission may or may not approve the General Counsel's recommendation. Submitted for your review is a brief stating the position of the General Counsel on the legal and factual issues of the case. Within 15 days of your receipt of this notice, you may file with the Secretary of the Commission a brief (ten copies if possible) stating your position on the issues and replying to the brief of the General Counsel. (Three copies of such brief should also be forwarded to the Office of the General Counsel, if possible.) The General Counsel's brief and any brief which you may submit will be considered by the Commission before proceeding to a vote of whether there is probable cause to believe a violation has occurred.

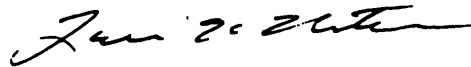
Please be advised that due to statute of limitations considerations, this Office will request that your clients execute an agreement to toll the applicable statutes of limitations before granting any request for an extension of time to respond to the enclosed brief. In addition, any extension request must be submitted in writing five days prior to the due date, and good cause must be demonstrated.

Thomas A. Federer, Esq.
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A finding of probable cause to believe requires that the Office of the General Counsel attempt for a period of not less than 30, but not more than 90 days, to settle this matter through a conciliation agreement.

Should you have any questions, please contact Dawn M. Odrowski, the attorney assigned to this matter, at (202) 694-1650.

Sincerely,



Lawrence H. Norton
General Counsel

Enclosure
Brief

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GENERAL COUNSEL'S BRIEF

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II. FACTUAL & LEGAL ANALYSIS¹

A. The Committee's Acceptance of Prohibited Contributions

The investigation in this matter revealed that AM & PM, Inc., a corporation operated by Mr. Paul Matteucci,² advanced funds on behalf of the Committee to print copies of a candidate-authored book at a time when the Committee had insufficient funds to pay for the printing. The books were to be distributed free to supporters in connection with the 2000 election. The advance constituted a prohibited in-kind contribution from AM & PM.

The investigation showed that the Committee received an additional prohibited in-kind contribution from Amensearch, Inc., a corporation established by the candidate, Mr. William Federer, in the form of a price discount that resulted from Amensearch's concurrent orders to print a large number of the same books.

1. The Law

The Federal Election Campaign Act of 1971, as amended ("the Act"), prohibits corporations from making contributions in connection with a Federal election. 2 U.S.C. § 441b(a). It also prohibits candidates and political committees from knowingly accepting or receiving prohibited contributions. *Id.* The term "contribution" includes "any direct or indirect payment, distribution, loan, advance, deposit or gift of money, or any services or anything of

¹ The activity in this matter is governed by the Act and Commission regulations in effect during the 1999-2000 election cycle, which precedes the amendments made to the Act and regulations by, and as a result of, the Bipartisan Campaign Reform Act of 2002 ("BCRA"), Pub. L. 107-155, 116 Stat. 81 (2002). Accordingly, all citations to the Act and regulations contained in this report refer to the Act and regulations as they existed prior to the effective date of BCRA.

² According to its Articles of Incorporation, AM & PM, a Missouri corporation, was established in 1995 as a computer and computer consulting business. Mr. Matteucci served as president of AM & PM, Inc. He conducted a variety of work through AM & PM including management consulting, planning, computer software development and campaign work. AM & PM also owned printing presses and printed materials such as GOTV postcards and fliers for campaigns. According to Mr. Matteucci, the number of AM & PM employees varied but did not exceed about nine. AM & PM was administratively dissolved on September 14, 1999.

1 value . . . to any candidate, [or] campaign committee . . . in connection with" any Federal
2 election. 2 U.S.C. § 441b(b)(2). See also 2 U.S.C. § 431(8)(A). The term "anything of value"
3 includes all in-kind contributions and the provision of goods and services without charge
4 or at a charge which is less than the usual and normal charge for such goods and services.
5 11 C.F.R. § 100.7(a)(1)(iii).

6 **2. The Facts³**

7 Mr. William Federer was a candidate in the 1998 and 2000 elections for the 3rd
8 Congressional District in Missouri. Federer for Congress Committee was his principal campaign
9 committee for both elections. Mr. Paul Matteucci is a longtime political activist who worked on
10 both campaigns. Mr. Federer identified him as his initial campaign manager for the 2000
11 campaign, and Mr. Matteucci described his role as primarily introducing Mr. Federer to people in
12 the political community and "drumming up support." Mr. Matteucci credited himself with
13 retiring the Committee's 1998 campaign debt and raising about \$100,000 for the 2000 campaign
14 by the time Mr. Federer announced his candidacy in September 1999. He left the campaign
15 shortly thereafter.

16 As part of their effort to raise funds for the 2000 campaign, Mr. Matteucci and Mr.
17 Federer decided in the summer of 1999 to use a book authored by Mr. Federer, *America's God &*
18 *Country* ("AG&C"), as a way to introduce him to potential supporters and to give to persons who
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³ The facts discussed below are based on publicly available information, documents produced to the Commission and interviews conducted by OGC staff with former and current Dickinson Press employees, Mr. Paul Matteucci, and a retired agent of the Federal Bureau of Investigation ("FBI")

1 made contributions exceeding a certain amount.⁴ The Committee, however, had insufficient
2 funds to pay to print the books. As of June 30, 1999, the Committee had reported cash on hand
3 of only \$1,321 and a debt of \$8,233, most of it owed to AM & PM in connection with the 1998
4 election for "printed materials for campaign." A separate printing of 3,000 books for the
5 Committee was estimated to cost between \$10,000-\$11,000. Therefore, according to Messrs.
6 Matteucci and Federer, Mr. Matteucci's company, AM & PM, Inc., advanced the funds for a
7 3,000-book order.⁵

8 Mr. Matteucci stated that the 3,000-book order for the Committee, consisting of 2,000
9 "white bound" and 1,000 "gold bound" books,⁶ was added to an order Mr. Federer had placed
10 with Dickinson Press, Inc. to print copies of the books to be sold for profit. Documents from
11 Dickinson Press essentially corroborate Mr. Matteucci's statements. Copies of Dickinson Press
12 purchase orders show that Mr. Federer placed two orders to print copies of AG&C, one on June
13 17, 1999 for 5,500 books ("the original order") and an "add-on order" on July 25, 1999, for
14 another 6,000 books.⁷ The original order consisted of only plain hardcover books and soft cover
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⁴ In the past, Mr. Federer sold copies of *America's God & Country* ("AG&C") following presentations he made to church and school groups. AG&C is an encyclopedia of quotations from past and present U.S. leaders and government and historical documents. It has been published since 1994 by Fame Publishing, Inc. and more recently by Amerisearch, Inc., a corporation for which Mr. Federer serves as president.

⁵ Mr. Matteucci stated in a 2001 interview with the FBI that AM & PM's advance was also partially an attempt to segregate copies of the books to be sold from those printed for the campaign to distribute free. Mr. Federer also stated to the FBI that efforts were made to separate books for the campaign from those sold for profit. The precise meaning of these statements is unclear.

⁶ Mr. Matteucci apparently reversed the numbers of each book type in his interview with the FBI. See footnote 9.

⁷ The July 25 order was referred to in Dickinson Press documents as an add-on to the original. Both the original and add-on orders were revised several times before Mr. Federer, in his capacity as president of Amerisearch, signed the final versions, dated June 17, 1999 and July 25, 1999, respectively. Dickinson Press's purchase orders, or quotations, contain the specifications of a printing job including the type of book (hardcover, soft cover, etc.) and binding, the quantity, the quoted price and the terms of payment and shipping. The form contains an "Accepted By" signature line followed by title and date lines to be completed by the customer.

1 books and was paid for by Amerisearch. The add-on order included the 3,000 books purchased
2 by AM & PM for the Committee. It included hardcover books with gilded edges, the so-called
3 "gold bound" books, and was paid for by both Amerisearch and AM & PM. Amerisearch paid
4 with a \$9,135 check dated July 25, 1999 and signed by Mr. Federer. AM & PM paid with a
5 check for \$12,180 dated July 26, 1999, signed by Mr. Matteucci, with the notation "Federer for
6 Congress" on the accompanying check stub.

7 Dickinson Press had required cash-in-advance payments for both orders before printing
8 The orders were
9 printed together after payments were received and were designated as a single print job in
10 Dickinson Press documents.

11 Messrs. Federer and Matteucci both stated that the Committee eventually reimbursed AM
12 & PM for its \$12,180 advance. A document obtained by the Commission, however, indicates
13 that the Committee reimbursed AM & PM for only part of its advance. In an August 31, 1999
14 invoice, AM & PM billed the Committee \$20,456 for various charges including consulting and
15 payroll fees and a \$11,491 "book advance." The Committee reported a disbursement to AM &
16 PM on September 20, 1999 in the amount of that invoice for "services rendered."⁸

17 **The Usual and Normal Charge for Books Printed for the Committee**

18 Although AM & PM paid \$12,180 to print 3,000 books for the Committee's use in
19 fundraising, neither AM & PM's payment nor the Committee's reimbursement covered the usual
20 and normal charge to print those books. See 11 C.F.R. § 100.7(a)(1)(iii). The usual and normal
21 charge to print copies of AG&C consisted of two components: the direct print costs comprised of

⁸ As discussed in Section II.B of this report, this disbursement, along with other disbursements to AM & PM and other vendors during the same period, was among those the Committee inadequately disclosed in its 1999 Year-End Report.

1 a unit price to print each type of book (hardcover, soft cover, hardcover with gilded edges) and
2 related costs such as film preparation and shipping.

3 The statements by Messrs. Federer and Matteucci that AM & PM ordered 3,000 copies of
4 AG&C coupled with Mr. Matteucci's description that the books for the Committee consisted of
5 "white-bound" and "gold-bound" books indicate the specific books ordered for the Committee in
6 the add-on order were 1,000 soft cover books and 2,000 hardcover books with gilded edges.⁹ As
7 detailed below, the usual and normal cost for these books, based on a non-discounted price
8 (\$13,106) and including a proportionate share of related costs (\$698) was \$13,714.

9 Dickinson Press's invoice covering both the original and add-on orders shows that it gave
10 a unit price discount for each order of 1,000 books exceeding 2,000 of a particular book type, a
11 kind of volume discount. Consequently, the Committee received the benefit of a discounted
12 price for its 3,000-book order because Mr. Federer placed the order to print books for the
13 Committee with orders to print 8,500 books for Amerisearch. Specifically, the invoice indicates
14 that the usual and normal unit price charged to print the first 2,000 soft cover books was \$3.46;
15 thereafter the price dropped to \$1.943. Because Amerisearch had ordered more than 2,000 soft
16 cover books, the charge for the Committee's 1,000 soft cover books was \$1.943 rather than

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⁹ Although Mr. Matteucci described the books purchased for the Committee as 2,000 "white bound" and 1,000 "gold bound" books, a copy of an earlier version of the add-on order he gave to the FBI in support of his statement reflected the reverse: 1,000 soft cover (or "white bound") books and 2,000 gilded-edged hardcover (or "gold bound") books. The final version of the add-on order also contained that combination of soft cover and gilded-edged books. Another indication that the books purchased for the Committee were the soft cover/gilded-edged combination books is that the price charged for the other set of 3,000 books in the add-on order, the hardcover books, matched the amount of Amerisearch's \$9,135 payment toward that order.

1 \$3,468, a discount of 56% resulting in a savings of \$1,525.¹⁰ Taking into account the
2 Committee's entire 3,000-book order of soft cover and gilded-edged hardcover books, the usual
3 and normal charge for the direct print costs was \$13,016 rather than a discounted charge of
4 \$11,491.¹¹

5 Dickinson Press's invoice covering both orders also included \$4,169 in related costs for
6 film preparation, editing and shipping fees and a \$1,400 credit for print overruns.¹² The usual
7 and normal charge for the 3,000 books purchased for the Committee, therefore, should have
8 included a proportionate share of the \$2,769 in net related costs. Three thousand of the total
9 11,919 books printed by Dickinson Press, or 25.2%, were for the Committee. The proportionate
10 share of related costs attributable to the Committee's books, therefore, was \$698 (25.2% of
11 \$2,769).

12 3. Analysis

13 AM & PM advanced \$12,180 in July 1999 to print 3,000 copies of AG&C for the
14 Committee's use in the 2000 election cycle because the Committee had insufficient funds to pay

¹⁰ According to Dickinson Press, the unit price charged for the other books ordered for the Committee -- 2,000 gilded-edged hardcover books at \$4,774 per book -- was also favorably influenced by the fact that these books were printed with other copies of the book, since the printing process for the "book block" (the book without a cover) is the same for any book type. However, this Office has insufficient information to determine the usual and normal cost of 2,000 gilded-edged hardcover books printed as part of a 3,000-book order, rather than an 11,919-book order, as was the case here.

¹¹ The fact that the non-discounted price of the 3,000 combination soft cover/gilded-edged books matches the figure for the \$11,491 book advance in AM & PM's invoice to the Committee is another indication that these books were the ones purchased for the Committee. In an interview with this Office in 2004, Mr. Matteucci could not explain why AM & PM paid Dickinson Press \$12,180 but billed the Committee for an advance of only \$11,491.

¹² Dickinson Press indicated in a letter to this Office that the invoice took into account print overruns, presumably the basis of the \$1,400 credit. According to the invoice, 11,919 books were printed, 419 more books than were ordered. Based on the discounted prices, the cost of those 419 books would have been about \$1,154. A Dickinson Press employee explained that overruns are common due to the way the printing press operates, but he could not confirm the reason for the credit in follow-up interviews.

1 the cost itself. AM & PM's \$12,180 advance did not cover the usual and normal charge to print
2 the 3,000-book order.

3 AM & PM's \$12,180 payment to Dickinson Press constituted an advance to the
4 Committee made to obtain an item the Committee would use to help raise funds. *See* 2 U.S.C.
5 § 441b(b)(2). Because AM & PM was a corporation at the time, the Committee was prohibited
6 from accepting the advance. *See* 2 U.S.C. § 441b(a). AM & PM's \$12,180 advance effectively
7 covered the non-discounted direct printing cost of the books purchased for the Committee
8 (\$11,491) and all but \$9 of a proportionate share of related costs (\$698)¹³ Because the
9 Committee repaid only \$11,491 of AM & PM's advance, \$689 of AM & PM's prohibited
10 contribution remains unrefunded.

11 Additionally, the Committee received the benefit of a discounted price for its 3,000-book
12 order because Mr. Federer placed the order to print books for the Committee with orders to print
13 8,500 books for Amerisearch. A separate order of 3,000 books for the Committee, comprised of
14 1,000 paperback books and 2,000 gilded-edged hardcover books, would have been too small to
15 receive the benefit of the discounted price Dickinson Press applied to orders for each book type
16 exceeding 2,000. Thus, the Committee received something of value from Amerisearch in the
17 form of a price discount. *See* 11 C.F.R. § 100.7(a)(1)(iii) The value of the discount, \$1,525,
18 reflects the difference between the non-discounted cost of the paperback books, \$3,468, and the
19 discounted cost of those books, \$1,943.

20 In light of AM & PM's advance to print books for the Committee and the benefit that
21 accrued to the Committee in the form of a price discount attributable to Amerisearch, the Office

¹³ The balance of \$9 is technically attributable to Amerisearch since it paid all costs of the print orders not covered by AM & PM's payment. Given the *de minimus* nature of that amount, we are not adding it to Amerisearch's in-kind contribution.

1 of the General Counsel is prepared to recommend that the Commission find probable cause to
2 believe that the Federer for Congress Committee and Thomas M. Busken, as treasurer, violated
3 2 U.S.C. § 441b(a).

4 **B. The Committee's Failure to Properly Report Disbursements**

5 The Act requires all political committees to file reports of their receipts and
6 disbursements. 2 U.S.C. § 434(a)(1). An authorized political committee shall report the full
7 name and address of each person to whom an expenditure of over \$200 is made within the
8 calendar year, together with the date, amount and purpose of such reporting expenditure.
9 2 U.S.C. § 434(b); 11 C.F.R. § 104.3(b)(4)(i). "Purpose" means a brief statement or description
10 of why the disbursement was made. 11 C.F.R. § 104.3(b)(4)(i)(A). Vague descriptions of
11 disbursements, such as "advance," "outside services," and "miscellaneous" do not fulfill the
12 Act's reporting requirements. *Id.*

13 During the 2000 election cycle, the Committee failed to properly disclose at least
14 \$233,289 in disbursements by inadequately describing the purpose of these disbursements. A
15 majority of these disbursements were made to two vendors: AM & PM, Inc. and Hutchings
16 Marketing, Inc.

17 The Committee's failure to properly report its disbursements began with its 1999 Year-
18 End Report, filed on January 31, 2000. In it, the Committee reported the purpose of 20
19 disbursements, totaling \$76,968, as "services rendered." These disbursements included \$22,555
20 to Hutchings Marketing and \$37,939 to AM & PM. The vague descriptions for these

disbursements amounted to a virtual failure to disclose the purpose of 66% of the total reported disbursements in the 1999 Year-End Report.¹⁴

The Committee continued to inadequately disclose the purpose of its disbursements, particularly those to Hutchings Marketing, as follows:

- In the 2000 July Quarterly Report, the Committee reported 8 of 16 disbursements to Hutchings Marketing, totaling \$41,739.12, as "consultant fees," "temp. services," or "services and supplies";
- In the 2000 12-Day Pre-Primary report, it reported a \$14,160.68 disbursement to Hutchings Marketing for "consulting, manager, temp";
- In the 2000 October Quarterly Report, it reported three disbursements to Hutchings Marketing, totaling \$46,743.44, for "consulting, computers, equipment, temp. staffing";
- In the 2000 12-Day Pre-General Report, it reported a \$27,548 disbursement to Hutchings Marketing for "consulting, computers, equipment, temp staffing";
- In the 2000 30-Day Post-General Report, it reported two disbursements to Hutchings Marketing, totaling \$20,510, for "consulting, equipment, temp. staffing, marketing"; and
- In the 2000 Year-End Report, it reported two of four disbursements to Hutchings Marketing, totaling \$5,619, for "consulting, staffing" and "consulting/equip/secur[ity]."

In each case, the purpose reported by the Committee failed to specify the kind of consulting, services or supplies that Hutchings Marketing provided

The Committee filed amendments to these reports in response to Requests for Additional Information from the Commission's Reports Analysis Division that addressed problems with the Committee's reporting. Even then, though, the Committee continued to report inadequately the purpose of some disbursements to Hutchings Marketing, still describing them as partly for

¹⁴ The Committee reported total disbursements of \$115,952 in the 1999 Year-End Report, filed on January 31, 2000

1 "consulting."¹⁵ In these initial amended reports, the Committee also continued to improperly
2 report disbursements to other vendors for "services rendered" or "expense reimbursement."¹⁶

3 The Committee ultimately filed additional amendments for the four 2000 disclosure
4 reports covering the period between July 20, 2000 and December 31, 2000 on October 13, 2003
5 These amendments were filed years after the original reports were due and only in response to the
6 Commission's letter notifying the Committee of its reason-to-believe findings in this matter.

7 None of the Committee's belated amendments obviates the original reporting violations.
8 The Committee's failure to properly report the purposes of its disbursements when its reports
9 were first filed deprived the public of information that should have been disclosed before and
10 shortly after the 2000 primary and general elections.

11 Accordingly, the Office of the General Counsel is prepared to recommend that the
12 Commission find probable cause to believe that the Federer for Congress Committee and
13 Thomas M. Busken, as treasurer, violated 2 U.S.C. § 434(b).

14 **III. GENERAL COUNSEL'S RECOMMENDATION**

15 Find probable cause to believe that Federer for Congress and Thomas M. Busken, as
16 treasurer, violated 2 U.S.C. §§ 441b(a) and 434(b)

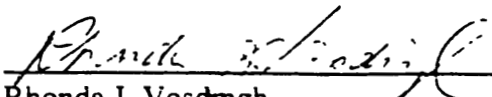
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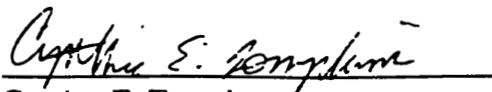
Lawrence H. Norton
Lawrence H. Norton
General Counsel

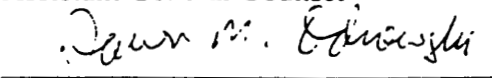
¹⁵ For example, in its amended 2000 October Quarterly, filed on January 8, 2001, the Committee continued to report the \$46,743 in disbursements to Hutchings Marketing as "consulting, computers, equipment, temp staffing," respectively. In its amended 2000 Pre-General Report, the Committee also filed on January 8, 2001, it continued to report the \$27,548 disbursement to Hutchings for "consulting, computers, equipment, temp staffing."

¹⁶ For example, in its amended 1999 Year-End Report, filed on December 28, 2000, the Committee reported a \$1,875 disbursement made to Tabor and Guard LLC on August 12, 1999 for "services rendered." Similarly, in its amended 2000 October Quarterly, filed on January 8, 2001, it reported a \$650 disbursement to John Moore on July 25, 2000 for "professional services."

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Rhonda J. Vosdmgh
Associate General Counsel for Enforcement


Cynthia E. Tompkins
Assistant General Counsel


Dawn M. Odrowski
Attorney

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